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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
Petition of Bell Atlantic Telephone)
Companies for Forbearance from Regulation)
as Dominant Carriers in Delaware;)
Maryland; Massachusetts; New Hampshire;)
New Jersey; New York; Pennsylvania;)
Rhode Island; Washington, D.C.; Vermont;)
and Virginia.)

CC Docket No. 99-24

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JOINT COMMENTS OF CTSI, INC. AND RCN TELECOM SERVICES, INC.

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SUMMARY

In these Joint Comments, CTSI, Inc. and RCN Telecom Services, Inc. demonstrate that Bell Atlantic's Petition fails to set forth the showing necessary to warrant forbearance of Bell Atlantic's special access services from dominant carrier regulation. As a threshold matter, Bell Atlantic's Petition fails to provide any supporting information or explanation for the methodologies used to derive its conclusions. Bell Atlantic's Petition also fails to demonstrate that it meets the requirements of Section 10, which are necessary to warrant forbearance.

In its Petition, Bell Atlantic draws sweeping conclusions regarding the status of competition in the special access services market, yet does not provide supporting data or adequately explain the methodologies used to reach its conclusions. Bell Atlantic cites to data in a Report by Quality Strategies, Inc., but fails to attach the report and fails to provide any information to explain how the data in the report was derived. The limited amount of data that is provided by Bell Atlantic is flawed and fails to consider key factors that are relevant to determining market share and demand and supply elasticities, which are critical to measuring competition in the special access services market.

As shown in these comments, Bell Atlantic continues to exercise market power in the high capacity special access services market. Bell Atlantic still holds a dominant market share in this market. In addition, high demand and supply elasticity do not exist in this market, barriers to entry remain high, and Bell Atlantic continues to control bottleneck facilities. Thus, contrary to Bell Atlantic's skewed claims, customers do not have the ability to readily switch to a competitor and competitors still do not have the ability to service and meet these customers' needs on a level necessary to place pressure on Bell Atlantic's pricing. For these reasons, Bell Atlantic's Petition must be denied.

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JOINT COMMENTS OF CTSI, INC. AND RCN TELECOM SERVICES, INC.

CTSI, Inc. ("CTSI") and RCN Telecom Services, Inc. ("RCN"), by their undersigned counsel and pursuant to the Commission's Public Notice, DA 99-224, hereby submit the following comments in response to the above-captioned petition filed by the Bell Atlantic Telephone Companies ("Bell Atlantic"), which seek forbearance from regulation as dominant carriers in their provision of special access services in 12 jurisdictions within their service areas.¹

CTSI and RCN strongly oppose Bell Atlantic's request for forbearance from dominant regulation in the provision of special access services. As a threshold matter, Bell Atlantic's Petition fails to provide any supporting information or explanation for the methodologies used to derive its conclusions. Bell Atlantic's Petition also fails to demonstrate that it meets the requirements of Section 10 under the Communications Act of 1934, as amended, which are necessary to warrant

¹ The jurisdictions covered by Bell Atlantic's Petition include: Delaware; Maryland; Massachusetts; New Hampshire; New Jersey; New York (including the Greenwich, Connecticut service area); Pennsylvania; Rhode Island; Washington, D.C.; Vermont; and Virginia.

forbearance. Indeed, as demonstrated in these comments, Bell Atlantic continues to exercise market power in the provision of special access services, and therefore, continued dominant carrier regulation of Bell Atlantic's services is critical to the development of competition in this area. For these reasons, the Commission should deny Bell Atlantic's Petition.

I. BELL ATLANTIC'S PETITION FAILS TO PROVIDE SUFFICIENT DATA OR AN EXPLANATION OF METHODOLOGIES USED TO SUPPORT ITS CONCLUSIONS

To receive forbearance from rate regulation for its special access services, Bell Atlantic must demonstrate that enforcement of Bell Atlantic's high capacity special access rates is: (1) not necessary to ensure that these rates are just and reasonable and are not unjustly or unreasonably discriminatory; and (2) not necessary to protect consumers. Bell Atlantic also must show that forbearance is in the public interest. 47 U.S.C. § 160(a). To meet these requirements, Bell Atlantic must demonstrate that it does not continue to exercise market power in the special access services market.² In addition, to meet the public interest requirement Bell Atlantic must show that forbearance from rate regulation for its special access services will promote competitive market conditions. 47 U.S.C. § 160(b). As explained below, Bell Atlantic not only fails to meet the requirements necessary to warrant forbearance, its Petition fails to provide sufficient data or an explanation for the data provided to support its conclusions. For these reasons, Bell Atlantic's Petition must be denied.

² *In Re Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd. 3271 (1995) ("AT&T Non-Dominance Order").

In addressing these forbearance requirements, Bell Atlantic draws sweeping conclusions regarding the status of competition in the special access services market, yet does not provide supporting data or adequately explain the methodologies used to reach its conclusions. Moreover, much of the information that is provided is irrelevant to the showing that Bell Atlantic must make in order to receive forbearance in this case.

For example, to support its conclusion that special access customers in Bell Atlantic's territory have competitive alternatives, Bell Atlantic cites to a Report by Quality Strategies, Inc. ("Report"), which, according to Bell Atlantic, states that competitors have "won over 30% of the high capacity special access business, and as much as 50% in key business centers." BA Petition at 7 (citing Attachment C, ¶ 36). First, Bell Atlantic fails to attach the Report that serves as the basis for this conclusion. Second, Bell Atlantic fails to explain or provide any information in its Petition or the corresponding attachments that explains how the data was derived to establish this conclusion. Without the insight or underlying information to explain the basis for the Report or this conclusion, it is impossible to determine their merits.

Bell Atlantic also states that "competitors with collocation or their own fiber can reach between 82 and 100% of the Bell Atlantic special access demand in the states covered by [the] Petition." BA Petition at 6. Here to, Bell Atlantic fails to sufficiently explain the basis for this conclusion or to provide information critical to the data that is provided. Specifically, Bell Atlantic fails to provide any data on the extent to which competitors have actually served as a competitive alternative to Bell Atlantic in the provision of special access business. Throughout its Petition, Bell Atlantic claims, with respect to the special access services, that there is a high degree of "addressability—the ability of a competitor to reach current customers." BA Petition at 6 n.5. Yet,

Bell Atlantic fails to provide any specific data on the extent to which competitors actually can and have reached Bell Atlantic's current customers. Bell Atlantic's failure to provide this data is inevitable because in order for Bell Atlantic to reach its desired conclusions it must ignore the other key factors that impede competitors' ability to reach these special access customers. As discussed below, these factors include high termination costs, limited coverage by competitors' facilities, and Bell Atlantic's continued control over bottleneck facilities and failure to fully open its markets to competition.

Bell Atlantic's classification of a "competitive" wire center as a measure of competition is another example of deficient data and conclusions. The Affidavit of Robert J. McDonnell (included as Attachment A to the Petition) states that the wire centers where competitors have collocated facilities or that are served by competitors' facilities are classified as "competitive" wire centers. McDonnell Affidavit at 3. As indicated in Bell Atlantic's Petition, collocated facilities include Bell Atlantic wire centers where there are operational collocation facilities, collocation facilities that are completed and waiting for occupancy, and collocated facilities that have been ordered and are under construction. McDonnell Affidavit at 2 n.1. Bell Atlantic's data, however, does not provide a breakdown of the number of facilities that are actually collocated and operational versus those that are still waiting for occupancy or completed construction. Assuming that, as Bell Atlantic claims, collocation is an actual measurement of competitive alternatives, this measurement is skewed if it includes facilities that are not yet capable of providing service to customers as a competitive alternative to Bell Atlantic.³ Moreover, Bell Atlantic's data does not set forth the percentage of

³ Bell Atlantic's reliance on collocation as a primary measure of competition fails to consider other factors that can prevent collocated carriers from providing equivalent services

those competitor-owned facilities contained within the “competitive” wire centers that are actually capable of providing high capacity services in competition with Bell Atlantic. Thus, much of the data Bell Atlantic provides in its Petition is unsupported, unexplained or basically irrelevant.

Bell Atlantic attempts to downplay its unsubstantiated conclusions by stating that competitive entry in only a few wire centers is necessary to reach most special access demand in its region. Attachment C, Affidavit of McDermott and Taylor at 24. To make this determination, Bell Atlantic focuses on DS1 channel equivalents in its major wire centers. Bell Atlantic’s data in support of this claim, however, is self-serving. *See* Affidavit of McDermott and Taylor at 10 Table 1. The data purports to represent the percentage of DS1 channel equivalents contained within Bell Atlantic’s major wire centers, but these wire centers by definition are the top 20 percent of Bell Atlantic’s wire centers as measured by DS1 channel equivalents. This type of circular reasoning allows Bell Atlantic to reach its desired conclusion, but also results in useless data for the purposes of demonstrating that the requirements for forbearance have been met. Where Bell Atlantic’s measurement starts by selecting the top 20 percent DS1 equivalent wire centers, it is inevitable that these wire centers will have a high percentage of DS1 equivalent demand. Thus, this data only proves that the top DS1 equivalent wires centers are by definition the top DS1 equivalent wire centers. As with the other information provided, Bell Atlantic fails to adequately explain the numbers underlying the basis for this conclusion. But more importantly, Bell Atlantic also fails to

to Bell Atlantic customers. These factors include the availability of additional collocation space to already collocated or new competitors, and the ability to obtain key section 251 network features and elements free from unreasonable restrictions and delays, and at adequate pricing.

provide any specific information as to the actual market share Bell Atlantic holds vis-a-vis its competitors in each of these "few competitive wire centers."

In its Petition, Bell Atlantic also lists the "competitors offering service in the area," as a demonstration of "competition" in each of the states. Attachment A - Exhibits 1-11. Yet, included in this list of competitors are carriers that have not yet commenced service in that area, but at this time, plan to offer services in that market. For example, in the District of Columbia, Bell Atlantic includes Level 3 and Metromedia Fiber Network, noting that these carrier have plans to enter the D.C. market. Similar references are found in the studies for Delaware, Maryland, New York, New Jersey, and New Hampshire. The plans of these carriers to enter the market may or may not be realized and cannot represent "addressability," or the ability of carriers to provide high capacity services to customers as an alternative to Bell Atlantic. As shown above, Bell Atlantic's Petition lacks substantiated data to support its conclusory statements regarding competition in the high capacity special access market, and therefore, Bell Atlantic fails to provide the showing necessary to grant forbearance in this case. On this basis, Bell Atlantic's Petition must be denied.

II. BELL ATLANTIC CONTINUES TO EXERCISE MARKET POWER IN THE HIGH CAPACITY SPECIAL ACCESS SERVICES MARKET

If a carrier exercises market power in the provision of its services, rate regulation is necessary to ensure that the rates, terms and conditions for that carrier's services are just and reasonable and are not unreasonably discriminatory.⁴ In assessing market power, the Commission looks at several

⁴ *In the Matter of Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, Order*, 11 FCC Rcd. 3271 (1995).

factors including market share, demand and supply elasticity, and a carrier's cost, structure, size and resources. AT&T Non-Dominance Order at 3293. In applying these factors to Bell Atlantic's provision of high capacity services, it is clear that Bell Atlantic continues to dominate this market, and thus, forbearance is not warranted in this case.

A. Market Share

Bell Atlantic's Petition virtually states that market share is insignificant in determining market power in the telecommunications industry. McDermott & Taylor Affidavit at 19. Although market share alone may not determine market power, it still plays a significant role in the analysis. To the extent that Bell Atlantic does address market share, it does so by focusing on DS1 channel equivalent capacity and does not consider other key factors, such as revenue. Bell Atlantic's error, along with the distorted results of using DS1 equivalents, leaves Bell Atlantic's Petition void of any true assessment of market share in the high capacity services market.

Bell Atlantic's use of DS1 capacity as the primary basis for determining market share is a convenient method by which Bell Atlantic can reach its desired results without considering other relevant factors, such as revenue. A DS3 channel is equivalent in capacity to 28 DS1 channels. Thus, if a CLEC is providing one DS3 channel to a customer and Bell Atlantic is providing 28 DS1 channels to 28 different customers, Bell Atlantic can claim that its market share is only 50 percent based on capacity. DS3 channels, however, typically are priced lower than DS1 channels. Thus, if a CLEC is providing a customer a DS3 channel at \$100/month and Bell Atlantic's providing its customers with 28 DS1 channels at \$50/month/per channel, then the CLEC's revenues would be \$100/month and Bell Atlantic's revenues would be \$1400/month. Based on this analysis, Bell Atlantic's market share would be 86 percent. Bell Atlantic's use of data based on capacity alone and

its disregard of other key factors that are relevant to determining market share results in inaccurate and self-serving conclusions.

Bell Atlantic also cites its mystery Quality Strategies Report for the proposition that Bell Atlantic has lost, on average, 31.7 percent of the high capacity services market. But, as shown above, the Petition fails to provide any explanation or basis to support this conclusion. Moreover, based on Bell Atlantic's own calculations, on average, Bell Atlantic would still hold over 68.30 percent of the high capacity services market. This factor, along with the other factors, such as demand and supply elasticity, demonstrate that Bell Atlantic still holds market power in the high capacity services market.

B. Demand and Supply Elasticity

A basic theme throughout Bell Atlantic's Petition is that high capacity special access service customers have many competitive alternatives to receiving service, and thus, Bell Atlantic does not dominate this market. Significantly, however, Bell Atlantic's Petition does not provide any specific data on the extent to which these "competitors" actually can and are serving Bell Atlantic's high capacity customers. Bell Atlantic's position is based on theories and possibilities, but no hard data. The reason for this is because Bell Atlantic's Petition ignores other critical factors such as whether customers have the willingness and ability to switch to a competitor and whether competitors have the ability to serve and meet these customers' needs. In other words, contrary to Bell Atlantic's claims, high demand and supply elasticity do not exist in this special access services market.

The demand elasticity of customers is a factor in determining whether a carrier possesses market power. Demand elasticity is assessed by analyzing the willingness and ability of customers to switch carriers in order to take advantage of price reductions and special services. AT&T Non-

Dominance Order at 3305. In its Petition, Bell Atlantic claims that customers of its special access services have competitive alternatives and “readily switch carriers to take advantage of the best offer.” BA Petition at 9. Of course, Bell Atlantic’s Petition does not provide any specific data to demonstrate that customers are readily switching to competitors. This lack of evidence is not surprising, however, because Bell Atlantic’s Petition ignores the extent to which customers may not be able and willing to switch carriers because of other factors, such as competitors’ limited service areas and Bell Atlantic’s high termination liability fees on term plans or under customer service arrangements. In order to obtain lower rates or to avoid or minimize Bell Atlantic’s high non-recurring charges, customers must order longer term pricing plans. If the customer should then desire to switch to another carrier, it must pay a high termination liability fee. Moreover, CLECs’ facilities, both owned and collocated, are geographically limited to small discrete areas within the Bell Atlantic Region. The diagrams of the competitive entrants attached to Bell Atlantic’s Petition show, if anything, that there are more areas in each state in Bell Atlantic’s region where these competitive entrants’ facilities do not exist, rather than the other way around. Currently, competitors’ facilities simply do not have the scope and reach of Bell Atlantic’s facilities. These factors, along with others, greatly reduce the incentive and ability of customers to “readily switch carriers to take advantage of the best offer,” as Bell Atlantic claims.

Supply elasticity is another factor that the Commission considers in determining whether a carrier exercises market power. AT&T Non-Dominance Order at 3303. Supply elasticity, in this case, assesses the extent to which CLECs can readily provide service to high capacity customers so as to constrain Bell Atlantic’s pricing behavior. The Commission has found a high supply elasticity

in markets with low entry barriers and where competitors can add significant additional capacity in a relatively short period of time. *Id.*

Despite Bell Atlantic's claims, entry barriers remain high.⁵ With collocation, carriers still have to purchase interoffice and channel termination circuits, multiplexing and cross-connects. As long as competitors are dependent on inadequate provision of OSS, slow or unavailable collocation or provisioning of unbundled network elements, there will be significant barriers to entry. Moreover, as noted above, the networks of facilities-based competitors covers only a small fraction of Bell Atlantic's service areas. It will require large amounts of capital for carriers to expand their networks, and even then, competitors do not have the ability to deploy the facilities and personnel in any given local market that Bell Atlantic enjoys by virtue of its status as an ILEC.

The bottom line is that high demand and supply elasticity do not exist in the special access services market and Bell Atlantic's considerable size and resources allows it to continue to exercise power in this market. Bell Atlantic's Petition fails to demonstrate otherwise, and thus, must be denied.

⁵ Bell Atlantic notes that there are now more CLECs than ILECs. McDermott and Taylor Affidavit at 21. Like much of the other information provided in its Petition, this data is incomplete and basically irrelevant to the showing that Bell Atlantic must make. Bell Atlantic still controls local bottleneck facilities and fails to demonstrate in its Petition the extent to which these certified CLECs have the ability to offer equivalent services to Bell Atlantic's customers. *See* AT&T Non-Dominance Order at 3308 (which points to control over bottleneck facilities as an indicator of market power).


III. CONCLUSION

For these reasons, CTSI and RCN urge the Commission to deny Bell Atlantic's request for forbearance from dominant carrier regulation for provision of high capacity special access services.

Respectfully submitted,

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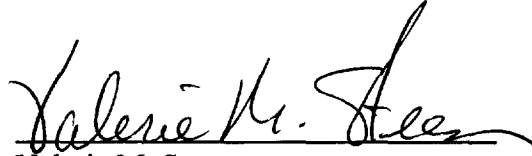

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Dated: March 18, 1999

CERTIFICATE OF SERVICE

I, Valerie M. Steen, hereby certify that on this 18th day of March, 1999, I served a copy of the foregoing Joint Comments of CTSI, Inc. and RCN Telecom Services, Inc. by hand delivery or first-class mail on the following active parties:


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